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| 10/551,750 | 06/02/2006 | Jan Peter Kruit | VOB-38839 | 4267 |
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| Pearne & Gordon LLP 1801 East 9th Street Suite 1200 Cleveland, OH 44114-3108 | | | EXAMINER PAGAN, JENINE MARIE | |
| | | | ART UNIT 3728 | PAPER NUMBER |
| | | | NOTIFICATION DATE 04/30/2010 | DELIVERY MODE ELECTRONIC |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/551,750

Applicant(s)

KRUIT, JAN PETER

Examiner

JENINE M. PAGAN

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 January 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) 26 and 27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 26 and 27 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 September 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB06)
Paper No(s)/Mail Date 1/7/2010
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ ~~Notice of Informal Patent Application~~
- 6) ☐ Other: _____

DETAILED ACTION

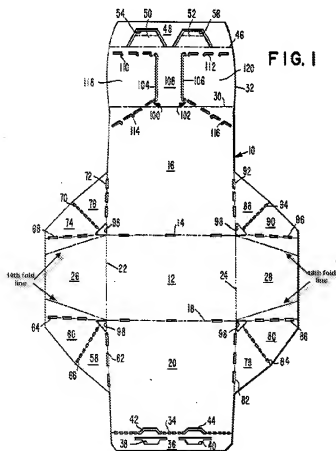
1. This Office Action acknowledges the applicant's amendment filed on 1/7/2010.

Claims 1-27 are pending in the application. Claims 26-27 are withdrawn.

The text of those sections of Title 35, U.S. code not included in this action can be found in a prior Office Action.

Claim Rejections - 35 USC § 103

2. Claims 1-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilson US 4,032,053 in view of Dutcher US 4,498,581 disclosed in the Applicant's IDS.



Claim 1: Wilson discloses a package for containers comprising a bottom panel 12, a first and second side panel 16/20 connected thereto via diametrically opposed first fold lines 14/18 and a first and second upper flap 108/36, connected to the respective side panels via a second and third fold line 30/34, respectively, wherein the first upper flap 108 is located on the second upper flap 36 and at least two openings 104/106 are provided in the first upper flap 108 through which fingers can be inserted for lifting said package.

Wilson does not specifically disclose the second upper flap extends at least between said openings, while, at the location of the second and third fold line over at least one part of the said second and third fold line at least two layers of sheet material are provided, on and/or on both sides of said second and third fold line such that an upper longitudinal edge of at least one of the containers abuts, during use, against the innermost of said two layers of sheet material.

However Dutcher discloses a second upper flap 18 that extends at least between said openings 52, while, at the location of the second and third fold line over at least one part of the said second and third fold line at least two layers of sheet material are provided, on and/or on both sides of said second and third fold line such that an upper longitudinal edge of at least one of the containers abuts, during use, against the innermost of said two layers of sheet material.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the second flap of Wilson to extend between the openings and also include two layers of sheet material as taught by Dutcher, since Dutcher suggests at Col 3:7-16 and Fig. 1 and 4 that such a modification would strengthen the handle and the overall structure of the container and prevent it from breaking.

Claim 2: Wilson discloses on the side opposite the second fold line 30, the first upper flap 108 is connected via a fourth fold line 46 to a first support flap 48 which is located against the second side panel 20 but it does not specifically disclose a second upper flap is connected via a fifth fold line to a second support flap which is located against the first side panel.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the second upper flap of Wilson by adding a second support flap with a fifth fold line since it was known in the art that making this change will enclose the articles in the container and prevent them from falling out.

Claim 3: Wilson discloses the first support flap 48 has been fastened against the outside of the second side panel 20.

Claim 4: Wilson does not specifically disclose the second and fourth fold lines and the third and fifth fold line lie virtually over each other.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the second upper flap of Wilson to

extend to allow the second and fourth fold lines and the third and fifth fold line lie virtually over each other since it was known in the art that making this change will strengthen the overall structure of the of the container.

Claim 5: Wilson discloses each side panel 16/20, on two opposite sides, is provided with a closing flap 58/76/78/88 connected thereto via a sixth fold line 62/72/82/92 but it does not specifically disclose the closing flaps on each side of the package jointly have a width which is at least equal to the width of the bottom panel.

It has been held that, where the only difference between the prior art and the claims is a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than a prior art device, the claimed device is not patentably distinct from the prior art device. *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 469 U.S. 830, 225 USPQ 232 (1984).

Claim 6: Wilson discloses via seventh fold lines 22/24 extending at right angles to the first fold lines 14/18, two support closing flaps 26/28 are connected to oppositely located sides of the bottom panel 12.

Claim 7: Wilson discloses a corner flap 60/74/80/90, each closing flap (74,76,60,58)/(88,90,78,80) is connected to a support closing flap 26/28.

Claim 8: Wilson discloses the relevant corner flaps 60/74/80/90 being confined between the respective closing flaps 58/76/78/88 and the support closing flaps

26/28 but it does not specifically disclose the two closing flaps abut against a support closing flap.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closing flaps of Wilson to extend to abut against the support closing flaps since it was known in the art that making this change will strengthen the structure of the container and prevent the items from falling out.

Claim 9: Wilson discloses the closing flaps are fastened, in particular glued, against the corner flaps. (Col 3:18-20)

Claim 10: Wilson does not specifically disclose the lower edge of the closing flaps runs approximately parallel to the bottom panel.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closing flap of Wilson to run parallel to the bottom panel since it was known in the art that such a modification will improve the overall structure of the container.

Claim 11: Wilson does not specifically disclose the closing flaps on both sides of the package overlap, at least partly.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closing flaps of Wilson to extend to long enough to overlap since it was known in the art that making this change will strengthen the structure of the container and prevent the items from falling out.

Claim 12: Wilson discloses two opposite sides 16/20 and a first upper flap 108, but it does not specifically disclose the first upper flap is connected via an eighth fold line to an upper closing flap, which upper closing flaps are fastened to the closing flaps and/or the side panels or glue flaps connected.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the container of Wilson to include a eighth fold line connected to the upper flap and also add a upper closing flap to the top side of the container since it was known in the art that such a modification will improve the overall structure of the container.

Claim 13: Wilson discloses in the first upper flap 108, tear lines 110/112 are provided extending from near an opening 104 in a direction remote from the other opening 106, while, each time, between two tear lines 110/112 a tear tab 118/120 is provided extending in the direction of a longitudinal edge of the first upper flap 108.

Claim 14: Wilson discloses the second upper flap 36 extends substantially not below each tear tab 118/120.

Claim 15: Wilson discloses at least two rows are provided of each at least three containers, which rows extend parallel to side panels and wherein at least one and preferably each container between a first and last container in a row abuts against the inside of said sheet material. (Fig. 2 and 4)

(See claim 1, regarding the teaching of a double layer with respect to the reference of Dutcher.)

Claim 16: Wilson does not specifically disclose each side panel comprises a lower panel part and an upper panel part connected thereto via an eleventh fold line, said upper panel parts slightly inclining towards each other such that the upper side of the package is narrower than the bottom panel.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the container of Wilson to include a eleventh line to cause the side panel to form an upper and lower portion to cause the upper portion to incline since it was known in the art that such a modification will cause the container to conform to the bottles and prevent access moving while being transported.

Claim 17: Wilson discloses the package is manufactured from cardboard.

Wilson does not specifically disclose the package has a specific weight of less than 380 gr/m², in particular less than 320 gr/m², more in particular less than 280 gr/m²

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the specified measurements as disclosed above, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Claim 18: Wilson discloses the package is manufactured from cardboard.

Wilson does not specifically disclose the package has a specific weight of 250 gr/m², in particular less than 225 gr/m², more in particular 200 gr/m² and preferably 180 gr/m² or less

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the specified measurements as disclosed above, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Claim 19: Wilson discloses a bottom panel 12, a first and second side panel 16/20, connected to the bottom panel 12 via first fold lines 14/18 extending substantially parallel to each other; a first and second upper flap 108/36, connected to the first and second side panel 16/20, respectively, via a second and third fold line 30/34, respectively, extending approximately parallel to the first fold line 14/18; wherein in the first upper flap 108 at least two openings 104/106 are provided for allowing the passage of fingers.

Wilson does not specifically disclose the second upper surface has a width and form such that it can lie on or below the first upper surface, substantially between said two openings.

However Dutcher discloses a second upper surface 18 has a width and form such that it can lie on or below the first upper surface 40, substantially between said two openings 52.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the second upper flap of Wilson to extend between the openings as taught by Dutcher, since Dutcher suggests at Fig. 1 and 4 that such a modification would strengthen the handle and the overall structure of the container and prevent it from breaking.

Claim 21: Wilson discloses each side panel 16/20 on two opposite sides, via a sixth fold line 92/82 extending approximately at right angles to the first fold lines 14/18, is connected to a closing flap 58/76/78/88, while two closing flaps, cooperating when the package is set-up, on two opposite sides of the bottom panel 12, via a seventh fold line 22/24 extending approximately at right angles to the first fold lines 14/18, a support closing flap 26/28 is connected; via a ninth fold line 68/64/86/96, each closing flap 58/76/78/88 is connected to a corner flap 60/74/80/90, which corner flap is connected, via a tenth fold line (see figure above), to a support closing flap 26/28, while each respective ninth 68/64/86/96 and tenth fold line (see figure above) intersect in a corner of the bottom panel 12.

Wilson does not specifically disclose closing flaps have a joint width which is at least equal to the corresponding width of the bottom panel and the fold lines include an angle of less than 90 degrees, more in particular less than 60 degrees.

It has been held that, where the only difference between the prior art and the claims is a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than a prior art device, the claimed device is not patentably distinct from the prior art device. *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 469 U.S. 830, 225 USPQ 232 (1984).

Claim 22: Wilson does not specifically disclose the respective side panel in a bottom and a top side panel, while the upper side panel is approximately trapezoid-shaped and the closing flaps each comprise at least an eleventh fold line, at least folding element, approximately at the location of the eighth fold line, while, preferably, a recess is provided in each closing flap, at the location of the intersection between the sixth fold line and the eighth fold line.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the container of Wilson to include a eleventh line to cause the side panel to form an upper and lower portion since it was known in the art that such a modification will cause the container with the flaps to conform to the bottles and prevent access moving while being transported.

Claim 23: Wilson does not specifically disclose one of the upper flaps, in particular the first upper flap is connected in two opposite sides via a twelfth fold line, to an upper sidewall flap, in particular a slightly trapezoid-shaped upper

sidewall flap with a length, at right angles to the twelfth fold line, which approximately corresponds to the length of the sixth fold line between the second or third fold line and the adjoining eighth fold line.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the container of Wilson to include a twelfth line to the ends of the upper flap to create a two upper side flaps since it was known in the art that such a modification will strengthen the container structure and prevent the items from falling out.

Claim 24: Wilson discloses the blank is manufactured from cardboard.

Wilson does not specifically disclose the cardboard has a specific weight of less than 380 gr/m², in particular less than 320 gr/m², more in particular less than 280 gr/m².

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the specified measurements as disclosed above, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Claim 25: Wilson discloses the blank is manufactured from cardboard.

Wilson does not specifically disclose the cardboard has a specific weight of 250 gr/m², in particular less than 225 gr/m², more in particular 200 gr/m² and preferably 180 gr/m² or less.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the specified measurements as disclosed above, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Response to Arguments

3. Applicant's arguments, see Amendment, filed 1/7/2010, with respect to the rejection(s) of claim(s) 1-25 under 103(a) with respect to reference of Wilson have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Wilson US 4,032,053 in view of Dutcher US 4,498,581. However in response to the Applicant's argument that the removal of portion of Wilson would teach away from having two layers of sheet material, if the container is constructed of two layers, which is taught by the reference of Dutcher the removal of such portions as 118 and 120 would not teach away from such. Also removing such panels is considered to be intended use, the panels of Wilson do not have to be removed in order to create the container claimed.

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JENINE M. PAGAN whose telephone number is

(571)270-3216. The examiner can normally be reached on Monday - Thursday, 8am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mickey Yu/
Supervisory Patent Examiner, Art Unit 3728

/Jenine M Pagan/
Examiner, Art Unit 3728